



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 14, 2003

Mr. Ken Johnson
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2003-3260

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181045.

The City of Waco (the "city") received a request for "any and all incident and/or offense reports" and statements, photographs, videotape, audio recordings, reports, records, and other materials relating to a named individual and/or his residence. You state, and provide documentation showing, that the requestor withdrew a portion of his request and modified his request to exclude certain vehicle identification numbers, license plate numbers, social security numbers, driver's license numbers, and information concerning a child from certain offense reports encompassed by his request. Thus, such information is not responsive to the present request, and this ruling will not address that information.¹ You state that some responsive information has been released to the requestor. You claim that the remaining responsive information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

You state that Exhibit 6 consists of peace officer's accident report forms. Section 550.065(b) of the Transportation Code states that, except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date

¹We need not address your section 552.130 arguments for this information.

of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See* Transp. Code § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides two or more pieces of the required information specified by the statute. *Id.* In this case, as the requestor has not supplied two or more pieces of the required information, you must withhold the submitted peace officer's accident report form in Exhibit 6 under section 550.065(b) of the Transportation Code.

You next argue that Exhibit 5 is excepted under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Exhibit 5 involves juvenile conduct that occurred before September 1, 1997. Therefore, section 58.007 of the Family Code does not apply to the records at issue. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, 1997 Tex. Sess. Law Serv. 4179, 4187; Open Records Decision No. 644 (1996). However, former section 51.14(d) of the Family Code provides for the confidentiality of juvenile law enforcement records relating to conduct that occurred before January 1, 1996. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Because Exhibit 5 concerns juvenile conduct that occurred before January 1, 1996, we find that this exhibit is confidential under former section 51.14 of the Family Code and must be withheld under section 552.101 of the Government Code.

In summary, you must withhold the peace officer's accident report forms submitted as Exhibit 6 in accordance with section 550.065 of the Transportation Code. Exhibit 5 must be withheld under section 552.101 in conjunction with former section 51.14(d) of the Family Code. The remaining requested information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

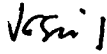
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 181045

Enc: Submitted documents

c: Mr. Colin H. O'Neil
P.O. Box 7575
Waco, Texas 76714-7575
(w/o enclosures)